



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 9, 1996

The Honorable Leslie Poynter Dixon  
Criminal District Attorney  
County of Van Zandt  
202 N. Capitol  
Canton, Texas 75103

OR96-0517

Dear Ms. Dixon:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. You have received a request for information contained in the personnel file of a former employee. You informed this office that you have provided the requestor with access to the requested documents after redacting the following information: birth dates, social security numbers, home address and telephone numbers, number of dependents, and driver's license numbers. You assert that the redacted information is excepted from required public disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. Your request was assigned ID# 30478.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within 10 days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On December 7, 1994, we asked you for copies of the records at issue. To date we have not received the requested copies.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exceptions you raised. Consequently, we find that you have not met your burden under sections 552.301 - .303 of the Government Code and accordingly have waived any protection section 552.108 may have otherwise afforded the requested information.

The other exceptions that you raised, sections 552.101, 552.102, and 552.117 of the Government Code, except from public disclosure information that is made confidential by law. Because the distribution of confidential information is a criminal offense, *see* Gov't Code § 552.352, we will discuss the applicability of these exceptions to the types of information at issue in the current request.

Section 552.117 of the Government Code, as it read before the 1995 amendments to the Open Records Act, protects the following types of information:

(1) the home address or home telephone number of:

(A) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(B) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

(2) the home address, home telephone number, or social security number of an employee of the Texas Department of Criminal Justice, or the home or employment address or telephone number, name, or social security number of a family member of the employee.<sup>1</sup> [Footnote added.]

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<sup>1</sup>Although the legislature has significantly amended the language of, and consequent protection under, section 552.117 since the date of your request, *see* Act of May 29, 1995, H.B. 1718, 74th Leg., R.S.

Because you have not informed this office as to whether the former employee was serving the county as a peace officer, for purposes of this ruling we will assume that section 552.117(2) is inapplicable here.

Section 552.117(1) must be read in conjunction with Government Code section 552.024, which provides in pertinent part:

(a) *Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, or social security number, or that reveals whether the person has family members.*

(b) *Each employee and official and each former employee and official shall state that person's choice under Subsection (a) to the main personnel officer of the governmental body in a signed writing not later than the 14th day after the date on which:*

....

(3) *the former employee or official ends service with the governmental body.*

....

(d) *If an employee or official or a former employee or official fails to state the person's choice within the period established by this section, the information is subject to public access. (Emphasis added.)*

Accordingly, section 552.117(1) serves to protect the former employee's home address and telephone number only if he elected to make this information confidential in compliance with section 552.024(b)(3) prior to the sheriff's receipt of the open records request. *See Open Records Decision No. 530 (1989) (character of requested information as public under section 552.117 is determined as of time request for information is made).*

However, in the event that the employee did not properly make this election in compliance with section 552.024(b)(3), we now discuss the applicability of sections 552.101 and 552.102 to information made confidential under section 552.117(1) as well as to the other information you seek to withhold. Section 552.102(a) protects

Information . . . in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter. The exception to public disclosure created by this subsection is in addition to any exception created by Section 552.024. Public access to personnel information covered by Section 552.024 is denied to the extent provided by that section.

Section 552.102 is designed to protect public employees' personal privacy. The scope of section 552.102 protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102 protection is the same as that for information protected by common-law privacy under section 552.101: to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.).

In Open Records Decision No. 169 (1977), this office held that an individual's home address normally may not be withheld from the public on privacy grounds without a demonstration of "truly exceptional circumstances such as, for instance, an imminent threat of physical danger." *Id.* at 6. Absent a demonstration of "truly exceptional circumstances," this office lacks any basis for concluding that the former employee's home address and telephone number are protected by common-law privacy. We also note that birth dates, marital status, and social security numbers<sup>2</sup> are not protected by privacy.

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<sup>2</sup>This office concluded in Open Records Decision No. 622 (1994) at 3 that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

It is not apparent to us that the social security numbers at issue here were obtained or are maintained by the sheriff's office pursuant to any provision of law, enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the sheriff to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are

*Cf.* Open Records Decision No. 455 (1987) (applicants for public employment). Nor do we believe that drivers license numbers constitute such "highly intimate or embarrassing information" so as to bring this type of information within the protection of common-law privacy.<sup>3</sup>

In summary, the sheriff must release the former employee's home address and telephone number if the employee failed to elect to make this information confidential as of the time the sheriff received the open records request; otherwise this information must be withheld pursuant to section 552.117 of the Government Code. All of the remaining information you sought to withhold must be released. If you have any questions regarding this matter, please contact our office.

Yours very truly,



Kay Hamilton Guajardo  
Assistant Attorney General  
Open Records Division

KHG/RWP/cbh

Ref.: ID# 30478

cc: Mr. J. Tom Graham  
The Mineola Monitor  
P.O. Box 210  
Mineola, Texas 75773

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therefore confidential under section 552.101 of the Government Code in conjunction with 405(c)(2)(C)(vii). We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, you should ensure that the numbers were not obtained or maintained by the sheriff pursuant to law enacted on or after October 1, 1990.

<sup>3</sup>Additionally, you have cited no statute, nor is this office aware of any, that makes drivers license numbers confidential so as to bring this information under the protection of section 552.101, which protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.)